
(1981) 07 AHC CK 0006
In the Allahabad High Court
Case No : Writ Petition No. 1505 of 1976

Balbhadra

APPELLANT

Vs

Board of Revenue and Others

RESPONDENT

Date of Decision : 13-07-1981

Acts Referred:

Succession Act, 1925 — Section 119, 14
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 18, 229(B)
(1)

Citation : (1981) AWC 525

Hon'ble Judges : R.M. Sahai, J

Bench : Single Bench

Advocate : G.N. Verma, R.N. Singh and S.N. Singh, for the Appellant; M.S. Negi, R.J.D. Misra, V. Sahai and B. Dayal and S.C., for the Respondent

Final Decision : Allowed

Judgement

R. M. Sahai, J.—Having failed to obtain declaration u/s 229-B (1) of UP ZA & LR Act I of 1951 from Board of Revenue and Additional Commissioner, the second and first appellate Court that Deoki, the childless widowed daughter of Ganesha, one of the wives of Sheo Jatan and transferor of opposite party No. 1, was only a life estate holder of the fixed rate tenancy bequeathed in her favour by her father on 18-7-1947 the petitioners" grandsons of Sheo Jatan from another wife Smt. Jalewa have come to this Court.

2. Before coming to real issue whether life estate created under U.P. Tenancy Act continued even after enforcement of ZA & LR Act, it may be observed that the attempt of learned Counsel for Petitioner to construe the will as creating absolute interest, in favour of Bhagwati Din, father of Petitioner is as remote and devoid of any substance as the argument of learned Counsel for opposite parties that despite the use of word life interest (Heen Hyati) in the will Deoki was full fledged owner as although she had no right to transfer the property yet the right to mortgage etc. was conferred on her. While construing the will the predominant

consideration is the intention of testator. In the earlier part the testator no doubt mentioned his apprehension, that after his death his widow Ganesha and daughter Deoki may not be looked after by his son Bhagwati Din and his heirs but that was reason for bequeathing the property in their favour. What interest they acquired was disclosed in the latter part. It was stated that after testators' death, ladies i. e , Smt. Ganesha (her share is not in dispute) and Deoki shall have such rights as are mentioned except the right to transfer, i, e. mortgage, encumber or construct and get their names mutated as life interest holder. The right to mortgage is no doubt a right which is available to full fledged owner but the use of word life estate (Heen Hyati) with absolute bar on transfer dispells any doubt about the intention of the testator. The anxiety of testator to provide for hard days by permitting the ladies to mortgage or encumber cannot be understood as nullifying the real intention expressed in unequivocal words.

3. Having ascertained the intention what needs examination is if this was frustrated by subsequent event or change in law or any rule. In *Jamuna v. D.D.C.* 1968 RD 391, Hon^{ble} Satish Chandra, J. as he then was, held :

The principle enunciated by the Supreme Court would, in my opinion, be applicable to the case of a will previously existing on the proprietary rights of an intermediary in Sir or Khudkasht lands Though Suraj Kali acquired the share of Ram Mangal Rai, which included Sir and Khudkasht lands, under the will, but the restrictions imposed on her by the will went, alongwith the rights themselves extinguished and the property vested in the State as a result of their acquisition under the Z.A. Act. The pre-existing restrictions, namely, that she would have no right of alienatioa and that after her death the property would go in accordance with the line of succession provided in the will, would vanish with the extinguishing of her rights and would not be attracted or applicable to the Bhumidhari rights conferred on her by the Zamindari Abolition Act.

4. Any disagreement with this view should normally have resulted in reference to larger Bench but on the question that incidents and provisions of will under which Smt. Suraj Kali took the property, would continue to govern the property, the Hon^{ble} Judge held:

In my opinion the question really does not arise in view of the finding ... But since the question of the applicability of the provisions of the Z.A. Act relating to succession was argued at length, I may express my opinion on this question as well.

the decision becomes obiter dicta and the question whether a life estate holder held in one or the other capacity mentioned in Section 18 of the Z.A. Act on the date of vesting to entitle her to acquire bhumidhari rights is still at large.

5. The touch-stone on which this controversy has to be decided is the status of the life estate holder on date of vesting. It necessarily relates back to the date when succession opened as the life estate holder shall have the same status and interest on the date of vesting as she had when the property devolved on her.

The question, therefore, is did property vest in Deoki who was life estate- holder on the date when Sheo Jatan died. For this it is necessary to understand what a life estate is. The life estate under a will is unlike Hindu widows' estate in the latter the estate vests in widow. She is not a tenant for life. The estate vests in her completely. In *Janki Amal v. Narayan Swami* (1916) 43 Indian Appeals 207 , it was stated by the Privy Council her right is of the nature of a rights of a property; her position is that of owner; her powers in that character are, however, limited; but ... so long as she is alive, no one has any vested interest in succession." These principles were approved by the Hon"ble Supreme Court, as well, in *Jaisri Sahu Vs. Rajdewan Dubey and Others*, .

6. But life estate holder enjoys the property and remains in possession only. The estate vests in heir-at-law. The property vests not in the life estate holder but in the ultimate successor. In *Bagawati Barmaya v. Kali Charon Singh*, 8 ALJ 433, the Privy Council approved the view taken by Calcutta High Court that in case of inheritance under Hindu Law, reversionary heir is determined at the date of widow's death and no one has any vested interest during her life time whereas in case of life estate holder vesting takes place immediately in favour of heir-at-law but the possession remains with the life estate holder. This is one of the incidents of life estate. On death of limited owner, the property reverts to testator's estate i. e. it devolves on testator heirs. Mulla's Hindu Law, 14th Edition, 457 (iii) Vol. 10.

7. Section 119 of Indian Succession Act, which deals with vesting of legacies provides :

* * * * *

8. While interpreting this Section in relation to life Estate created by a Hindu, a Division Bench of this Court in *Darshan Singh and Others Vs. Wali Khan and Others*, , held :

Where a person bequeathed his property to his widow and after the death of surviving widow, to R ... The widow took under Hindu widow's interest but only a life interest under the will.

It was urged for Petitioners that in view of these provisions Bhagwati Deen became an absolute owner on death of Sheo Jatan. Suffice it to mention that the section applies to legatees. Bhagwati Deen was not a lagatee, therefore, he could not acquire any right by virtue of this section.

9. On principle, however, there appears to be little difference. In Hindu law a life estate holder only enjoys possession If the title does not vest in her it must vest somewhere as there can be no vacuum in succession. Consequently it vests in heir at law exactly in the manner described in illustration (iii) to Section 119. What flows from this is that in case of a life estate created by a Hindu before the date of vesting the property on the death of testator vested in the heir-at-law but its immediate possession and enjoyment was deferred. In the will it was

mentioned that Bhagwati Deen was absolute owner of the property but as there was apprehension that he or his heirs would not maintain the ladies a life estate was created in favour of Deoki i. e. she was permitted to remain in possession and enjoy the property. But no ownership or title was created in her favour, it was not a Hindu widow's estate which vested in her. When the testator died the property vested in Bhagwati Deen or his heirs but its possession and enjoyment was deferred, till the life of Deoki. She was, therefore, not fixed rate tenant nor did she acquire Bhumidhari rights u/s 18 of the ZA & LR Act.

10. Reliance was placed by learned Counsel for opposite parties on Bai Vajia (Dead) by Lrs. Vs. Thakorbhai Chelabhai and Others, and it was urged that a limited owner under Hindu law is owner of property till her life time. The property, therefore, vests in her. The decision is on Section 14 of the Hindu Succession Act. What was held in this case was that right of maintenance of a Hindu widow is a pre-existing right. Then the widow in this case was permitted a right of main tenance and in default she was entitled to execute the decree for maintenance. In execution of the decree the property in dispute came into her possession. In these circumstances, it was held that: she became owner of the property. The decision could nor, therefore, be of any help to opposite parties.

11. learned Counsel for opposite parties further submitted that Petitioners had no locus-standi to file this petition. It was urged that Petitioners had no semblance or title and, therefore, they were not entitled to approach this Court. Reliance was placed on Dr. Satyanarayana Sinha Vs. S. Lal and Company (P) Ltd., . The argument is mis-conceived. The Petitioner has filed a suit for declaration which was decreed by the trial Court but was dismissed by Additional Commissioner and the Board of Revenue. Aggrieved by these orders the Petitioner has filed this petition under Article 226 of the Constitution of India. How can the argument of non-maintainability be advanced is not easy to appreciate.

12. It was then urged that opposite parties were in adverse possession because on the date of vesting fixed rate tenancy extinguished and the continuance of Deofci in possession was contrary to the provisions of law. In any case the Petitioner being not in possession lost their rights u/s 210 of the ZA & LR Act, 1 of 1951. The argument is again mis-conceived, as on the view taken above Deoki was never a fixed rate tenant and there was no question of extinction of her right. She was only a life estate holder and she could not acquire any right by adverse possession. Admittedly Deoki died during pendency of the writ petition. Till then the Petitioners had no cause of action against opposite party No. 1. She could not be deemed to be in adverse possession.

13. In the result, this petition succeeds and is allowed. The order passed by opposite parties nos. 1 and 2 are quashed. The Petitioner shall be entitled to its costs.